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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,574	08/22/2003	Edward McNulty	MCN003	8234
7590 03/24/2005 DIEDERIKS & WHITELAW, PLC 12471 Dillingham Square, # 301 Woodbridge, VA 22192			EXAMINER BLAKE, CAROLYN T	
			ART UNIT	PAPER NUMBER
			3724	
DATE MAILED: 03/24/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/645,574

Applicant(s)

MCNULTY, EDWARD

Examiner

Carolyn T Blake

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 1 and 14-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group II in the reply filed on January 25, 2005 is acknowledged. The traversal is on the ground(s) that (1) a proper restriction cannot be made between the apparatus claims, and (2) it does not place burden on the Examiner to examine the method claims of Group IV. These arguments are not found persuasive. Although Applicant argues that MPEP 806.05(c), example 3 is not applicable to this application, it is indeed relevant because Applicant has provided evidence and admitted on the record the subcombinations are separably patentable and have separate utility. See the Remarks/Arguments section of Applicant's Response, lines 19-21. Furthermore, the method claims have acquired a separate status in the art as shown by their different classification, and, therefore, it would place burden on the Examiner to review these claims in addition to the apparatus claims.

The requirement is still deemed proper and is therefore made FINAL.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 62.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 82, 141.

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4. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

5. The disclosure is objected to because of the following:

- Page 1, lines 9-10: "Many grass covered areas, such as public parts, dog parks, ball fields and, particularly, golf courses are provided" should be changed to - - Many grass covered areas, such as public parts, dog parks, ball fields and, particularly, golf courses, are provided- -.
- Page 2, lines 9-10: "the sprinkler head will 'pop-up' either partially, or fully above the ground" should be changed to - - the sprinkler head will 'pop-up' either partially or fully above the ground- -.
- Page 2, lines 12-14: "grass growing around the sprinkler head may grow too close thereby preventing the sprinkler head from operating" should be

changed to - - grass growing around the sprinkler head may grow too close thereby, preventing the sprinkler head from operating- -.

- Page 10, line 2: "positioned at or about" should be changed to - - positioned at or above- -.
- Page 11, lines 7: The second end in incorrectly identified with the reference number 136.
- Page 11, lines 12-13: The second end in incorrectly identified with the reference number 131.
- Page 11, line 16: The second end in incorrectly identified with the reference number 131.
- In addition, it is noted the disclosure is replete with grammatical errors, specifically concerning comma use. The disclosure should be carefully proofread.

Appropriate corrections are required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites the limitation "said head assembly" in line 10. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 2-9 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Toepfinger (3,062,299).

Regarding claim 2, Toepfinger discloses a cutting head system adapted to be rotated in order to trim around a head cover (48) having a head cap provided with a centering member (12) comprising: a head member (10) having a peripheral edge portion interconnected to a central hub (30) through an intermediate web portion (54), said head member (10) being adapted to extend about a head cover (48); a cutting element (50) projecting from the peripheral edge portion of the head member (10); a drive shaft member (14) having a driven end portion extending to a driving end portion, said driving end portion being drivingly connected to the head member (10); and a centering element (12) extending within the head member (10) and projecting beyond the cutting element (50), said centering element being adapted to engage with the centering member of the head cap (48) to center the head member (10) about the head cover such that, upon application of a driving force to the driven end portion of the drive shaft (14), the head member rotates about the head cover (48) causing the cutting element to trim grass growing around the head cover (48).

Regarding claim 3, Toepfinger discloses the centering member is constituted by a recess provided along the head cap (48). See the space around the head cap (48) in FIG 2.

Regarding claim 4, Toepfinger discloses the head member (10) includes an outer peripheral side portion leading to an upwardly tapering intermediate web (54) that extends to the central hub (30).

Regarding claim 5, Toepfinger discloses the intermediate web portion (54) includes a plurality of vent opening wherein, upon application of the driving force to the drive shaft (14), said vent opening create an airflow to expel grass under the head member (10).

Regarding claim 6, Toepfinger discloses a spring member (20), said centering element (12) being retractably mounted within the head member (10), with the spring member (20) biasing the centering element (12) outward from the head member (10).

Regarding claim 7, Toepfinger discloses a centering element housing (40) having a first end secured to the head member (10), a second end, and a hollow cylindrical main body portion extending there between; a bearing element mounted within the centering element housing (40); and a centering element retainer (36) supported within the centering element housing (40) through the bearing element, said centering element retainer (36) retractably positioning the centering element (12) within the centering element housing (40) being adapted to rotate relative to the centering element (12).

Regarding claim 8, Toepfinger discloses the head member (10) is detachably mounted in the driven end portion of the drive shaft (14).

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Regarding claim 9, Toepfinger discloses the cutting element (50) is constituted by a substantially circular cutting blade, said cutting blade being detachably secured to the peripheral edge portion of the head member (10).

Regarding claim 13, Toepfinger discloses the head cover (48) constitutes a sprinkler head cover.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Toepfinger as applied to claim 2 above, and further in view of Paliani (3,565,179).

Regarding claim 10, Toepfinger fails to disclose a cutting element holder. However, Paliani discloses a cutting element holder (1), said cutting element holder (1) having a first edge portion detachably secured and a second edge portion defining a cutting blade receiving recess (2). The cutting element holder protects the blades and aids in keeping the blade shape. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a cutting element holder, as disclosed by Paliani, on Toepfinger device for the purpose of protecting the blade and keeping the blade shape.

Regarding claim 12, Toepfinger discloses the cutting element (50) is constituted by a circular blade having a first edge portion including a plurality of cutting teeth (52) leading to a second edge portion.

12. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Toepfinger in view of Paliani as applied to claim 10 above, and further in view of Jerez (6,247,539). The Toepfinger-Paliani combination fails to disclose the cutting element holder includes a plurality of tab members. However, Jerez discloses a cutting element holder that includes a plurality of tab members (21b) projecting from the first edge portion and the head member includes a corresponding plurality of slots (14) arranged about the outer peripheral edge portion, said plurality of tab members (21b) being adapted to engage with corresponding plurality of slots (14) to position the cutting element holder relative to the head member. Unlike the Toepfinger-Paliani combination wherein the cutting element is secured by screws, this fastening method does not require any tools in order to secure the cutting element. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide tabs and slots, as disclosed by Jerez, on the Toepfinger-Paliani combination in order to securing the cutting element without tools.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tucker (1,064,790), Johnson (1,857,383), Baker (2,882,600), Drane, Jr. (3,143,176), Rousselet (3,174,224), Aman et al (3,554,293), Ford (3,555,680), Green et al (3,747,213), Thompson (3,814,189), Ford et al (3,905,103),

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Powell et al (4,832,131), Taylor (5,461,788), Carmichael (6,125,776), and Strickland (6,134,789) disclose a cutting head system adapted to be rotated in order to trim around a head cover having a head cap.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn T Blake whose telephone number is (571) 272-4503. The examiner can normally be reached on Monday to Friday, 8:00 AM to 5:30 PM, alternating Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N Shoap can be reached on (571) 272-4514. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CB

March 16, 2005



Allan N. Shoap
Supervisory Patent Examiner
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